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## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-202186

DATE: March 9, 1982

MATTER OF: Claim of American International Rent-A-Car

**DIGEST:** Where provision in Federal Supply Schedule (FSS) contract relieves Government of all responsibility for damage to vehicles rented under it, with exception of deductible amount in contractor's normal commercial insurance policy, failure by the contractor to purchase collision insurance for vehicle rented to Government agency will not result in Government being responsible for total damage to vehicle, as this would be in direct contravention of express intention of parties that contractor would bear primary risk of loss.

This is in response to a claim submitted by American International Rent-A-Car (American) in the amount of \$1,046.64 for damages to a rented vehicle. The claim was initially denied by the Nuclear Regulatory Commission (NRC) which then submitted it to this Office for resolution as a doubtful claim. For the reasons that follow, we agree with the determination made by the NRC and we deny the claim.

The record shows that American entered into Federal Supply Schedule (FSS) contract with the General Services Administration (GSA) whereby American agreed to provide, over the one year term of the contract, rental vehicles at prescribed rates. Following the execution of this contract, Francis Costello, an employee of the NRC, executed a rental agreement with American for the rental of a 1979 Camaro automobile. The car was subsequently damaged when it skidded on light snow and struck barriers on both sides of the highway. The repair estimate was in the amount claimed here.

Section 11(a) of American's FSS contract provides as follows:

"11. CONTRACTOR RESPONSIBILITY AND INDEMINIFICATION AGREEMENT:

- "a. The contractor assumes full responsibility for any and all loss or damage to the rented motor vehicle and relieves the United States of America, any of its agencies, or any of its officers, employees or rentees of all responsibility for any and all loss or damage to the contractor's motor vehicle furnished under the terms of the contract: provided, however, that the contractor may exclude the deductible amount as set forth in its normal commercial insurance policy.

"NOTE: Collision damage waivers offered by rental agencies ARE NOT NECESSARY for the traveler to be fully relieved of all responsibility for any and all loss or damage to the contractor's motor vehicle under normal circumstances. However, the traveler should be aware that the Government is responsible for the deductible amount provided it is legally responsible for any damage. In such cases, the agency employing the driver of the vehicle is responsible, under the Federal Tort Claims Act, for negligence of its employee acting within the scope of employment.

"Should travelers agree to the collision damage waiver, they do so at their personal expense and the cost IS NOT reimbursable by the Government."

American contends that under the above provision the Government has obligated itself to pay for damages to the rented vehicle up to the amount of the deductible in American's normal commercial insurance policy. It argues that since American's normal commercial insurance policy does not provide for collision insurance, the Government is liable for the full amount of the damages. It states that it was so informally advised by GSA before formulating its bid.

The NRC responds that if section 11(a) is interpreted in the manner advocated by American the basic intent of the section would be subverted. We agree.

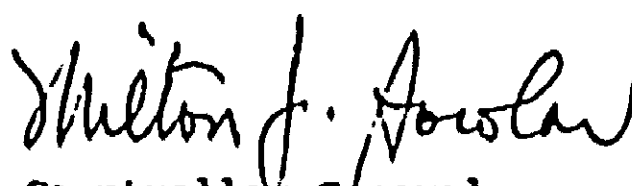
The intention of the parties as expressed in section 11(a), up to the clause beginning with "provided however," is that the contractor (i.e. American) should bear full responsibility for all damage to the rental vehicles. A proviso acts to restrict the operative effect of the contract language it modifies, to less than what its scope would otherwise be. Except perhaps in some unusual circumstances not here present, the proviso must be read in the context of the contract provision it modifies.

The contract places the financial responsibility for collision damages with the car rental agency. In recognition of the widespread industry practice of obtaining collision insurance with deductible coverage--generally in the \$100-\$500 range--the proviso shifts the financial burden for those relatively small losses to the Government. The rental contract between GSA and American is on a standard form and does not specifically address American's situation. Nonetheless, we think that the contract provision is clear in placing the primary risk of collision losses on the contractor. This result is not changed simply because American, unlike most car rental companies, has decided to be

a self-insurer for collision damages. Instead of increasing the Government's liability, it seems to us that American is in relatively the same position as a company which obtains complete collision insurance without any deductible amount; that company, too, would not be able to avail itself of the Government's willingness to assume a small portion of the risks for which collision coverage is normally obtained.

Insofar as American may have been misled as to its legal liabilities by a GSA employee, as American alleges, it is well settled on the basis of United States Supreme Court cases and the decisions of this Office, that one dealing with the Government has no right to rely on the erroneous advice of its employees.

Accordingly, American's claim is denied.

  
Comptroller General  
of the United States